REMARKS

Claims 2-18, 20-32, 34 and 35 are currently pending in the subject application and are presently under consideration. Claims 2-10, 13, 14, 17, 18, 21-31, and 34 have been amended to correct minor informalities. A version of all claims can be found at pages 2-8 of this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 2-3, 7-8, 18 Under 35 U.S.C. §102(b)

Claims 2-3, 7-8, 18 stand rejected under 35 U.S.C. §102(b) as being anticipated by Paatelma (US 6,463,042). Withdrawal of this rejection is respectfully requested for at least the following reasons. Paatelma does not teach or suggest each and every element of the subject claims.

> For a prior art reference to anticipate, 35 U.S.C. §102 requires that "***each and every element*** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

The claimed subject matter relates generally to communication in a cellular communications system in which a transmission range of a signal can be a function of a data rate of the signal as well as a function of a power level of the signal. For example, at a given fixed *power level*, a signal at a higher data rate has a smaller transmission range than a signal at a lower data rate. (*See* Fig. 3). Conversely, at a given fixed *data rate*, a signal at higher power will have a larger transmission range than a signal at a lower power. (*C.f.* FIGS. 4a-d). Therefore, by adjusting the power levels of different portions of a data packet *that have different data rates*, a more uniform transmission range *for the entire data packet* can be achieved. (*See* pg. 6, ll. 18-21). In particular, independent claim 2 recites, "the communication unit transmits *the first portion of the data packet at a*

first data rate *and the second portion of the data packet at a* ***second data rate***." Paatelma does not teach or suggest these features.

Rather, Paatelma relates to a mobile station power-saving method that transmits the header portion of a data packet at a higher power level than the data portion of the packet when the data portion can be ignored. As a result, the mobile station can enter a power-saving mode after receiving enough of the data portion to detect that portion was transmitted at a lower power level. (*See* Abstract; col. 4, ll. 58-65). While Paatelma discloses that the header and the data portions can be transmitted at different power levels, the reference is utterly void of any teaching or suggestion that the header and data portions are transmitted at different ***data rates***. Accordingly, Paatelma does not teach or suggest the communication unit transmits *the first portion of the data packet at a* ***first data rate*** *and the second portion of the data packet at a* ***second data rate***. The Examiner does not even address these aspects of the claim in the Office Action, for which Paatelma is silent. Thus, this rejection cannot be maintained and should be withdrawn.

In addition, Paatelma is further silent as to transmission ranges as well as to the effects that power level (or data rates) have on transmission ranges. For example, Paatelma teaches lowering the power level of the data portion so the mobile station can distinguish between random data and valid data, but the reference does not contemplate or acknowledge that, by lowering the power of the data portion, the transmission range of the data portion will be smaller than the transmission range of the header portion for the same data packet. Accordingly, Paatelma does not teach or suggest, "the first transmission power and the second transmission power are selected so that the first portion and the second portion ***have similar transmission ranges***" as recited in dependent claim 3. At page 3 of the Office Action (mailed April 3, 2007), it is argued these features are taught by Paatelma, however, at the indicated portions, the reference merely notes that the by detecting a difference in power level, the mobile station can determine whether to receive the remainder of the data portion or ignore the remainder and enter a reduced-power state. Most particularly, nowhere does Paatelma teach or suggest a single aspect relating to transmission ranges, much less selecting a power level such that two portions of a packet ***have similar transmission ranges***.

II. Rejection of Claims 9-17, 32 Under 35 U.S.C. §103(a)

Claims 9-17, 32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Paatelma (US 6,463,042) in view of Fisher, *et al*. (US 5,768,695, hereinafter referred to as "Fisher"). This rejection should be withdrawn for at least the following reasons. Neither Paatelma nor Fisher, either alone or when combined, teach or suggest all the claimed features.

> To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) ***must teach or suggest all the claim limitations***. *See* MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *See In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In particular, claims 9-17 depend either directly or indirectly from independent claim 2, which is believed to be allowable over Paatelma. The addition of Fisher, which relates to a user-programmable device for configuring of ramp-up and ramp-down control signals for a radio based upon certain timing sequences (*see* Abstract), does not cure the deficiencies extant in Paatelma with respect to independent claim 2. Accordingly, this rejection of dependent claims 9-17 should be withdrawn.

Regarding independent claim 32, the claim recites, "means for determining the transmission power levels of the first and second portion ***based on a desired transmission range*** *for both the first and second portion*", which is neither taught nor suggested by Paatelma, Fisher, or any suitable combination thereof. Page 9 of the Office Action proposes "Paatelma inherently teaches the processor evaluating a range from the transmission", citing column 2, lines 36-45. Applicant's representative respectfully disagrees, as Paatelma neither expressly nor inherently teaches evaluating suitable transmission ranges. At the portions of the reference indicated, Paatelma simply notes

that the header portion is transmitted at a higher power level than the data portion ***when the data portion contains invalid data*** (*e.g.*, so the receiver can save power by ignoring the invalid data). Moreover, even if Paatelma did inherently teach evaluating suitable transmission ranges, there is nothing to suggest the reference employs the desired transmission range for determining the transmission power levels.

Furthermore, Paatelma provides for a data portion that has a *lower* power level and therefore a *smaller* transmission range, whereas transmission range difficulties occur because the transmission range of the data portion is smaller than the transmission range of the header portion because header portions are typically transmitted at a lower data rate. Thus, as applied to the claimed subject matter, the method of Paatelma further compounds this difficulty in that the data portion of a packet will have a smaller transmission range not only due to a higher data rate but also because Paatelma *reduces* the power level. For at least this reason, it is readily apparent that transmission range is neither contemplated by nor a concern of Paatelma, and thus cannot be an inherent feature as the analysis in the Office Action suggests. Rather, Paatelma's method expressly teaches away from the argument of inherency with respect to the Examiner's analysis. For example, the Office Action argues Paatelma inherently considers transmission ranges, yet for this argument to be germane, Paatelma would have to at least teach that power level for the data portion is increased, not decreased as disclosed. Fisher does not remedy these shortcomings. Accordingly, this rejection should be withdrawn.

III. Allowable Subject Matter

Applicant kindly thanks the Examiner for acknowledging that claims 20-31 are allowable, as well as the indication that claims 4-6, 34, and 35 would be allowable if cast in independent form. Based upon the comments *supra*, it is believed that all claims are in condition for allowance, thus, claims 4-6, 34, and 35 are not presently being recast in independent form, however, applicant reserves the right to do so at a later time.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063[TELNP200US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,
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